

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04CV11023 RCL

LEON ROBINSON,
Plaintiff

v.

THOMAS MENINO, PAUL F.
EVANS, JAMES WYSE,
MICHAEL PRIMM, JOHN A.
MARTEL, WAYNE ROCK,
GARRETT MITCHELL,
CHARLES HARDY, AMERICAN
BROADCASTING CO., INC.,
HEARST-ARGYLE STATION
INC., WCVB TV (Channel 5,
Boston) DENNIS MCCARTHY
AND JOHN DOE I,
Defendants

**DEFENDANT FORMER BOSTON POLICE COMMISSIONER'S PAUL EVANS'
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

The Plaintiff brings several causes of action against the Defendant, former Boston Police Commissioner Paul Evans, and numerous others, alleging a violation of 42 U.S.C. § 1983 ("Count I"), a violation of the Massachusetts Civil Rights Act ("MCRA") ("Count II"), a claim of trespass ("Count III"), and a claim of intentional infliction of emotional distress ("Count IV") stemming from an incident on February 21-22, 2001. Pursuant to Fed. Civ. R. 12(b)(6), the Defendant, former Boston Police Commissioner Paul Evans ("Defendant" or "Defendant Commissioner Evans") moves to dismiss all counts of the Plaintiff's Complaint.

In support of his motion, the Defendant states the following: (1) the Plaintiff's claims are barred by the doctrine of collateral estoppel; (2) the Plaintiff's claims are barred under Heck v. Humphrey, 512 U.S. 477, 487 (1994); and (3) the Plaintiff's claims are not actionable against the Defendant in either his official or personal capacity.

In further support of this motion, the Defendant submits the attached Memorandum of Law. *Wherefore*, the Defendant respectfully requests that this Honorable Court dismiss Plaintiff's complaint, with prejudice.

DEFENDANT REQUESTS AN ORAL ARGUMENT FOR THIS MOTION

Respectfully submitted,
DEFENDANT, FORMER BOSTON POLICE
COMMISSIONER PAUL EVANS,
Merita A. Hopkins
Corporation Counsel

By his attorney:

/s/ Helen G. Litsas
Helen G. Litsas, Esq., BBO#644848
Assistant Corporation Counsel
City of Boston Law Department
Room 615, City Hall
Boston, MA 02201
(617) 635-4023 (Litsas)

CERTIFICATE OF SERVICE

I, Helen G. Litsas, hereby certify that I served Defendant, Former Boston Police Commissioner Paul Evans's Motion to Dismiss upon the Plaintiff by mailing a copy, postage prepaid.

8/12/05
Date

/s/ Helen G. Litsas
Helen G. Litsas